

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

HEALTH INSURANCE PLAN OF NEW YORK,
on behalf of itself and all others similarly situated,

Plaintiff,

V.

AVENTIS PHARMACEUTICALS, INC.,

Defendant.

Civil Action No. 07-cv-6785 (HB)

Hon. Harold Baer, U.S.D.J.
ECF Case

DEFENDANT AVENTIS PHARMACEUTICAL INC.'S
MOTION TO DISMISS THE COMPLAINT
FOR LACK OF SUBJECT MATTER JURISDICTION
AND FAILURE TO STATE CLAIM

NOW INTO COURT, through its undersigned counsel, comes Defendant Aventis Pharmaceuticals, Inc., who pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) and for reasons more fully set forth in the accompanying Memorandum of Law, move for the dismissal of Plaintiff Health Insurance Plan of New York's Complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted.

WHEREFORE, Aventis prays that this Honorable Court grant this motion to dismiss the complaint for lack of subject matter jurisdiction and failure to state a claim.

Dated: October 22, 2007

Respectfully submitted,

/s/ Rosanna K. McCalips

John M. Majoras

Julia E. McEvoy (admitted *pro hac vice*)

Rosanna K. McCalips (admitted *pro hac vice*)

Jones Day

51 Louisiana Avenue, NW

Washington, DC 20001

Tel.: 202-879-4645

Fax: 202-626-1700

Counsel for Aventis Pharmaceuticals, Inc.

CERTIFICATE OF SERVICE

I, Rosanna K. McCalips, certify that the foregoing Motion to Dismiss the Complaint for Lack of Subject Matter Jurisdiction and Failure to State a Claim was served on October 22, 2007, on the counsel listed below in the manner indicated below:

Richard Cohen Peter D. St. Phillip LOWEY DANNENBERG BEMPORAD SELINGER & COHEN, P.C. White Plains Plaza One North Broadway White Plains, NY 10601 <i>Via ECF Filing</i>	Mark M. Sandmann Mark D. Fischer Jeffrey Swann RAWLINGS & ASSOCIATES, P.L.L.C. 325 W. Main Street Louisville, KY 40202 <i>Via Federal Express</i>
Gerald Lawrence LOWEY DANNENBERG BEMPORAD SELINGER & COHEN, P.C. White Plains Plaza One North Broadway White Plains, NY 10601 <i>Via Federal Express</i>	David S. Nalven HAGENS BERMAN SOBOL SHAPIRO LLP One Main Street, Fourth Floor Cambridge, MA 02142 <i>Via ECF Filing</i>
Thomas M. Sobol Edward Notargiacomo HAGENS BERMAN SOBOL SHAPIRO LLP One Main Street, Fourth Floor Cambridge, MA 02142 <i>Via Federal Express</i>	

/s/ Rosanna K. McCalips

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PROPOSED ORDER

Upon consideration of Defendant Aventis Pharmaceuticals, Inc.'s Motion to Dismiss the Complaint for Lack of Subject Matter Jurisdiction and Failure to State a Claim, it is this ____ day of _____, 2007, hereby

ORDERED that Plaintiff Health Insurance Plan of New York's Complaint is
DISMISSED with prejudice.

UNITED STATES DISTRICT JUDGE